

GIL 1-14-3 Sales and Use Tax: Sale-leaseback Transactions

September 9, 2014

Dear: XXXX

This correspondence is in response to your August 6, 2014 email inquiry regarding the sales and use tax implications of certain transactions involving the purchase, sale, and subsequent leaseback of property. Based upon the nature of your request, we are providing this General Information Letter (GIL). This GIL will be published on the Nebraska Department of Revenue's (Department) website with all identifying taxpayer information redacted.

GILs address general questions; provide analysis of issues, and direct taxpayers to the Nebraska statutes, Department regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current Department policy, and taxpayers may rely on the Department to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs at revenue.nebraska.gov that may be helpful to you.

You have presented a sequence of transactions involving three parties. Party X is a Nebraska-based company; Party Y is a vendor of information technology products ("products") and is licensed to collect Nebraska sales tax; and Taxpayer is a company providing leasing services in Nebraska.

Party X intends to purchase various products from Party Y, and then sell the property to Taxpayer. Party X will immediately lease the property back from Taxpayer. Party X and Taxpayer signed a Master Lease Agreement (Agreement) on DATE1. This Agreement did not contain a listing of the specific products being leased from the Taxpayer. The Agreement did contain two schedules, A and B, which are undated and incomplete financing templates. On DATE2, one of the template documents was completed to include specific products being purchased by Party X.

You have asked for an explanation of the sales and use tax treatment for: (1) the original purchase of the products by Party X; (2) the tax treatment for the sale of the products from Party X to Taxpayer; and (3) the tax treatment for the lease of the products from Taxpayer to Party X.

If dated documents exist at the time the products are initially purchased by Party X, indicating Party X's intent to finance the purchase of the property as of the date of receipt, Party X can pay

sales tax to Party Y on the initial purchase price. The subsequent sale of the products to Taxpayer, as well as the subsequent leaseback of the products from Taxpayer, would not be subject to tax. The length of time between the initial purchase and the subsequent sale and leaseback is not as important as having the documentation indicating the intent of Party X to finance the purchase of the products. The Agreement must, however, contain specific enough information to identify the property being purchased as well as the amount for which the property will be leased. Because the Agreement, dated XXXX, does not identify the property being leased by the Taxpayer nor the amount of the lease, Party X has properly paid tax on the products when they were purchased in XXXX.

Without further documentation, it cannot be presumed the products purchased by Party X were intended to be covered by the Agreement. In this event, the subsequent sale of the products by Party X to Taxpayer can be made exempt as a sale for resale. The leasing of the products back to Party X, however, would be subject to tax at the inception of the lease based on the entire contract amount assuming the contract contains a nominal purchase option. Nebraska Sales and Use Tax Regulation 1-018 provides that leasing transactions with a nominal option price are not considered leases and tax is due on the full contract amount at the inception of the lease.

FOR THE TAX COMMISSIONER

Sincerely,

Ellen Thompson
Tax Specialist
Policy Section